United Nations S/2005/336

Security Council

Distr.: General
24 May 2005

Original: English

Letter dated 23 May 2005 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council

On 26 March 2004, the Security Council adopted resolution 1534 (2004). In its resolution, the Security Council requested each Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the respective Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken.

After consulting with the Prosecutor and in conformity with the resolution, I am pleased to submit to you a revised version of the completion strategy of the International Criminal Tribunal for Rwanda, containing the assessment requested (see enclosure).

(*Signed*) Erik **Møse**
President

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Enclosure

Completion strategy of the International Criminal Tribunal for Rwanda

Summary

This document outlines the Completion Strategy of the International Criminal Tribunal for Rwanda (ICTR), based on the information available as of 23 May 2005. It takes into account the deadlines set in Security Council resolutions 1503 (2003) and 1534 (2004).

Trials of twenty-five persons are completed. Cases involving twenty-five accused are in progress. Consequently, the number of persons whose trials have been completed or are in progress is fifty. Sixteen accused are awaiting trial. The Prosecutor intends to transfer the cases of five detainees to national jurisdictions. The trials of the remaining eleven detainees will start from the second half of 2005 onwards, depending on Trial Chamber and court room availability.

The Prosecutor will focus on the accused bearing the greatest responsibility for the crimes committed in 1994. Fourteen indicted persons are still at large, of whom the Prosecutor intends to transfer four to national jurisdictions for trial. The Prosecutor has recently completed investigation against sixteen suspects in respect of the genocide. The files involving eight of these persons are now closed because of insufficient evidence, whereas eight indictments in respect of the other eight suspects are being submitted for confirmation. The Prosecutor intends to request the transfer of four of these indictments to national jurisdictions for trial. However, the number of persons brought to trial at the ICTR may be less than fourteen (ten indictees and four suspects whose indictments have been submitted for confirmation), as some of these persons may be dead, and others may never be arrested.

It is estimated that the cases involving the twenty-five accused whose trials are currently in progress will be completed from 2005 onwards. Trials of the maximum of fourteen persons at large will commence in 2007 and 2008. On the basis of the information presently available, it is estimated that by 2008, the Tribunal would have completed trials involving sixty-five to seventy persons.

I. Introduction

1. The present document contains an up-dated and revised version of the ICTR Completion Strategy as of 23 May 2005. It takes into account Security Council resolutions 1503 (2003) and 1534 (2004), adopted on 28 August 2003 and 26 March 2004, respectively. The document has been progressively elaborated based on contributions from the President, the Prosecutor, and the Registrar. The basis for the consultations between these three organs was originally a document entitled "Completion Strategy of the Office of the Prosecutor", which contained developments as of 29 April 2003.[1] The present document, which is the fifth report on the Completion Strategy, is based on revised information provided by the Prosecutor and developments in 2005.[2] Revised and updated reports on the ICTR Completion Strategy will be submitted in conformity with Resolution 1534 (2004).

2. It is recalled that the first accused was transferred to Arusha in May 1996. Since the first trial started in January 1997, the ICTR has handed down nineteen judgements involving twenty-five accused. Of these, twenty-two were convicted and three acquitted. Six of these convicts are presently serving their sentences in Mali. The total output of the second mandate (1999-2003) amounts to nine judgements involving fourteen accused. This represents a doubling of the number of accused that were tried, when compared to the first mandate (1995-1999). So far in the third mandate (2003-2007), the Tribunal has commenced ten trials involving fifteen accused and delivered four judgements involving four of these accused. The total number of judgements rendered by the ICTR thus far is set out in Annex I.

3. In addition to the twenty-five accused whose trials have been completed, twenty-five detainees in the United Nations Detention Facilities in Arusha are involved in nine trials. Five of these trials are multi-accused cases and very voluminous: the Butare case (six accused), the Military I case (four accused), the Government case (four accused), the Military II case (four accused) and the Karemera *et al.* case (three accused). Four trials are single-accused cases. The Simba trial commenced on 30 August 2004, and the parties have closed their respective cases. The Seromba trial started on 20 September 2004 and the Prosecution has closed its case. The Muvenyi trial started on 28 February 2005. Rwamakuba has recently been severed from the Karemera *et al.* case and he will be tried alone. Further details are

[1] A first version of the ICTR Completion Strategy was submitted to United Nations Headquarters on 14 July 2003. That document was prepared notably within the context of General Assembly resolution 57/289 (2003) para. 15 (a), which provided that the proposed budget of the ICTR for 2004-2005 should include "detailed information as to how the resources requested for the biennium would support the development of a sound and realistic completion strategy". A second version of the ICTR Completion Strategy was submitted to United Nations Headquarters on 29 September 2003. This document formed the basis of the request to increase the number of *ad litem* judges sitting "at any one time" from four to nine. By resolution 1512 (2003), the Security Council granted the request. The third version of the document was submitted to the President of the Security Council on 30 April 2004 and formed the basis of the assessments provided by the ICTR President and Prosecutor during the Council's meeting on 29 June 2004. On 19 November 2004, the ICTR submitted the fifth version of its Completion Strategy, which was considered by the Security Council on 23 November 2004.

[2] Following his first address to the Security Council in October 2003, the new ICTR Prosecutor, Mr Hassan B. Jallow, reviewed all the cases that are not currently on trial, with a view to determining which cases could reasonably be completed within the time frame set by the Security Council in Resolution 1503. The document dated 28 February 2004, entitled "Completion Strategy of the Office of the Prosecutor", was the result of this review.

given below (see II and III). Consequently, the total number of accused whose trials have been completed or are in progress is fifty.

4. Of the sixteen detainees awaiting the commencement of their trials, the Prosecutor intends to transfer five to national jurisdictions. The remaining eleven detainees will have their cases heard when the Tribunal's capacity so allows (see paras. 13-15 and 30).

5. Fourteen indictees are still at large. The Prosecutor intends to transfer four of these cases to national jurisdictions for trial (see para. 31). Some of these accused may be dead, whereas others may never be found. The actual number of these persons brought to trial at the ICTR may therefore be less than ten. As part of the Completion Strategy, the Prosecutor has formulated a more aggressive programme for tracking and apprehension of fugitives. The Tracking Team Section within the Investigation Division is being re-organised and strengthened. The Prosecutor has also visited a number of Member States of the United Nations with a view to securing their political support and cooperation for the arrest and transfer of fugitives.

6. Following investigation of sixteen suspects at large, the files of eight persons have been closed because of insufficient evidence. The Prosecutor is submitting eight new indictments, involving the remaining eight suspects, for confirmation, some four months ahead of schedule (see para. 32).

7. The Prosecutor considers that approximately forty suspects could be tried in national jurisdictions. He is currently engaged in discussions with some States for this purpose and has already transferred fifteen cases to Rwanda. In the event that it is not possible to transfer some of these cases to national jurisdictions, the Prosecutor will return to the Security Council with alternative proposals (see VI).

8. Security Council resolution 1503 (2003) provides that all work of the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY) shall be completed by 2010. It is difficult at this stage to indicate a completion strategy for the ICTR Appeals Chamber, as it is linked to the ICTY completion strategy. It is recalled, however, that all ICTR judgements except two have been appealed. At present, six judgements involving ten accused are on appeal (Niyitegeka, the Media case, Kamuhanda, the Cyangugu case, Gacumbitsi and Ndindabahizi). It is anticipated that the Appeals Chamber's already heavy workload will in all likelihood continue to increase. It should also be noted that appeals are normally lodged by both (in multi-accused cases all) parties. Therefore, the real number of appeals is much higher than the number of judgements on appeal. As the work load of the Trial Chambers decrease, the focus will shift to the Appeal Chamber where a drastic increase in work is anticipated. This increase is further compounded by the fact that the Appeals Chambers considers ICTY appeals as well. There will, at some stage, be a need to increase the number of judges at the Appeals Chamber if there are to be any reasonable prospects of completing the appeals by 2010. This will require an amendment of the Statute.

II. Activities in Chambers

9. On 3 December 2003, *Trial Chamber I* delivered judgement in the so-called "Media case". It involved three accused (Barayagwiza, Nahimana and Ngeze) and was the most voluminous case heard by that Chamber during the second mandate (1999-2003).

Originally, the Media trial was being conducted contemporaneously with the preparation of judgement in the Bagilishema case, which was delivered on 7 June 2001. It was twin-tracked with the trial of Gérard and Elizaphan Ntakirutimana which began on 18 September 2001 and concluded with the judgement on 19 February 2003. The Media case was then twin-tracked with the Niyitegeka trial, which started on 17 June 2002 and concluded with judgement on 16 May 2003.[3] Following the commencement of the third mandate in 2003, Trial Chamber I was reconstituted and has been hearing the continuation of the Military I case (Bagosora, Kabiligi, Ntabakuze and Nsengiyumva), transferred from the previous Trial Chamber III. The Prosecution closed its case in September 2004 after having called eighty-two witnesses, and the Defence case started in April 2005. Trial Chamber I has also conducted the Ndindabahizi trial (from 1 September 2003), in which judgement was delivered on 15 July 2004, and the Simba trial (from 30 August 2004), where the parties closing arguments are scheduled for July 2005.

10. *Trial Chamber II* was engaged in three trials concurrently during the second mandate. Judgement in the Kajelijeli trial was rendered on 1 December 2003. The Kamuhanda trial concluded with judgement on 22 January 2004. Particularly voluminous is the Butare trial. It involves six accused, which is the largest number or accused tried jointly before the ICTR (Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje).[4] In the third mandate, following the delivery of judgements in the Kajelijeli and Kamuhanda trials, Trial Chamber II has given priority to the completion of the Butare trial, and the Prosecution closed its case after having called fifty-nine witnesses. The Defence commenced its case on 31 January 2005. The Trial Chamber also commenced trial in the Government case, involving four government ministers (Casimir Bizimungu, Justin Mugenzi, Jerome Bicamumpaka and Prosper Mugiraneza), and is approaching the end of the Prosecution case. On 20 September 2004, the Chamber commenced the Military II trial, which is still at an early stage.

11. *Trial Chamber III* heard three trials contemporaneously during the second mandate. Judgement was given in the Semanza case (one accused) on 16 May 2003. The Cyangugu trial with three accused (Ntagerura, Bagambiki and Imanishimwe) concluded with judgement on 25 February 2004. On 2 April 2002, the Chamber also started the Military I trial and heard evidence over thirty-two trial days. Following the reconstitution of the Chambers in early June 2003, this case was transferred to Trial Chamber I (see para. 9 above). In the third mandate, Trial Chamber III has heard the Gacumbitsi trial (from July 2003), where judgement was delivered on 17 June 2004, and the Muhimana trial (from March 2004), where judgement was delivered on 28 April 2005. The Karemera *et al.* case commenced on 27 November 2003. Following the Appeals Chamber's decision of

[3] "Twin-tracking" implies that two trials are heard in consecutive slots, for instance according to the following pattern: Trial A five weeks, trial B five weeks, trial A five weeks, etc. Defence counsel in trial A will leave Arusha while trial B is heard. The purpose of this system is to use inevitable breaks during one trial to ensure progress of another case. Such breaks allow the Prosecution and the Defence to prepare for the next stage of the proceedings (for instance by interviewing witnesses etc.).

[4] One of the judges in this Chamber was not re-elected for the third mandate (2003-2007). In resolution 1482 (2003), the Security Council did not extend his mandate for the purpose of enabling him to continue sitting on the Butare case. On 15 July 2003, the Chamber decided that the trial should continue with a substitute judge under Rule 15 *bis* of the Rules of Procedure and Evidence ("the Rules"). Appeals against this decision were dismissed by the Appeals Chamber on 24 September 2003.

28 September 2004 and its reasons of 22 October 2004, the trial will start *de novo* before a different Trial Chamber Section in Trial Chamber III. Rwamakuba has since been severed from this case and his trial will commence on 9 June 2005.

12. The six single-accused cases that have started in the third mandate led to two judgements in 2004 (Gacumbitsi, Ndindabahizi) and two judgements in 2005 (Rutiganira, who pleaded guilty, and Muhimana). A further two judgements (Simba and Seromba) are expected later this year. The presentation of Defence cases in the Butare and Military I trials, involving ten accused, is expected to be completed in 2006. The situation is the same for the Government case. The Karemera *et al.* case and the Military II case are also complex trials. It is estimated that these two multi-accused trials will be completed in 2006/7. An overview of on-going trials is presented in Annex 2.

III. Remaining Detainees

13. Sixteen detainees are awaiting the commencement of their trials. These cases will result in single-accused trials, some of which will commence in 2005, depending on Trial Chamber capacity. The Tribunal is in the process of scheduling trials in two such cases. Further details are given in Annex 3.

14. All of the remaining indictees may not be tried by the ICTR. In determining which individuals should be tried before the ICTR, the Prosecutor will be guided by the need to focus on those who are alleged to have been in positions of leadership and those, who according to the Prosecutor, bear the greatest responsibility for the genocide. This concentration on the most senior leaders suspected of being most responsible for crimes committed within the jurisdiction of the ICTR is in conformity with Security Council resolution 1534 (2004). The criteria to be taken into consideration when making this determination are as follows:

- the alleged status and extent of participation of the individual during the genocide;
- the alleged connection an individual may have with other cases;
- the need to cover the major geographical areas of Rwanda in which the crimes were allegedly committed;
- the availability of evidence with regard to the individual concerned;
- the concrete possibility of arresting the individual concerned;
- the availability of investigative material for transmission to a State for national prosecution.

15. On the basis of these criteria, the Prosecutor intends to transfer the cases of five of the present detainees to national jurisdictions for trial.[5] It will be for the Trial Chambers to decide on the requests for transfer.

[5] As discussions with States are on-going, it is not possible to identify the five cases involving detainees that may be transferred to national jurisdictions.

IV. Workload Relating to the Detainees

16. The analysis provided above (II-III) shows that, in addition to the judgements already rendered involving twenty-five persons, the ICTR will deliver judgements concerning at least thirty-six accused presently in the Tribunal's custody (twenty-five accused currently on trial and eleven detainees from 2005 onwards). Therefore, there is a need to estimate the time required to complete twenty trials involving thirty-six detainees.[6]

17. Estimating the required number of trial days for the completion of these trials has its difficulties. However, for the purposes of continuity and the assessment of progress, the methodology used in the previous versions of the Completion Strategy, will be maintained. Calculations and projections made in these documents were premised on a sixty-two trial day average per accused.

18. It is recalled, firstly, that the estimates in previous Completion Strategy submissions were based on the number of witnesses and hours needed to present the Prosecution case, cross-examination and the Defence case. Since then, there has been considerable progress in many trials. For ease of reference, the table that formed the basis for the estimate of sixty-two trial days per accused is annexed to this document (Annex 4).

19. It is also recalled that the length of Defence cross-examination depends on factors relating to each individual case. Experience shows that in cases involving one accused, the cross-examination of Prosecution witnesses will generally take about the same amount of time as the examination-in-chief. In some instances, it may even be shorter. In multi-accused trials, the time taken for cross-examination often exceeds the time taken in examination-in-chief, particularly if the witness gives evidence implicating more than one or all the accused. It is assumed, as a working tool, that the total time taken for the cross-examination of a Prosecution witness will normally not exceed the total time taken for the examination-in-chief of that witness, when all cases are considered as a whole. In this context, it is taken into account that the Prosecution's list of witnesses has usually been reduced during trial.

20. Finally, it is recalled that information about Defence cases is difficult to obtain, particularly since most of these cases have not yet started and there is the issue of confidentiality when it comes to the trial strategy of the Defence. As a working tool, it is assumed that the time needed for the presentation of the Defence case should not exceed the time required for the presentation of the Prosecution case. Experience shows that it may often take less time.

21. As mentioned above, the Prosecution usually reduces the number of witnesses as the trial unfolds. Furthermore, the Chambers exert considerable control over these variables within the ambit of fair trial principles, for instance by restricting the length of examination-in-chief and cross-examination. Therefore, it is highly probable that the real time spent in court may be less than sixty-two trial days per accused. Recent single-accused trials suggest that the Prosecution will usually require about twenty trial days to present its case. It is also

[6] The twenty cases involving thirty-six accused are Butare (6), Military I (4), the Government trial (4), Military II (4), Karemera *et al.* (3), Rwamakuba (1), Simba (1), Seromba (1), Muvunyi (1) and eleven single-accused trials of detainees presently in Arusha. The Simba trial is virtually completed and is not included in the calculations below.

worth noting that such cases completed recently reflect a substantially lower number of the total number of trial days per accused (Elizaphan and Gérard Ntakirutimana: thirty trial days per accused; Niyitegeka: thirty-five trial days; Gacumbitsi: thirty-two trial days; Ndindabahizi: twenty-seven trial days; Muhimana: thirty-four trial days). It is expected that this trend towards shorter trials will continue. However, at present, it is considered prudent to use as a working tool the estimation of sixty-two trial days per accused. This includes variables such as time needed for opening and closing arguments, extended cross-examination in multi-accused trials, hearing of and deliberation on motions and illness.

Trials in Progress

22. The on-going trials are at different stages of completion. In the Butare trial, the Prosecution has closed its case after 212 days of trial. The Defence case commenced on 31 January 2005 and has proceeded over forty-nine trial days. Based on the premise that the Defence case will take as much time as the Prosecution case, a further 163 trial days will required for the Defence case.

23. In the Military I trial, the Prosecution closed its case after 202 trial days. The Defence case commenced on 11 April 2005 and has proceeded over twenty-four days of trial. A further 178 days will required for the presentation of the Defence case, based on the premise that the Defence case will take as long as the Prosecution case. However, experience in other multi-accused trials shows that the presentation of the Defence case usually requires less time compared to the Prosecution case, due to less intensive cross-examination.

24. The Government case involving four accused has thus far proceeded over 165 trial days. The Prosecution case is near completion and it is anticipated that approximately fifteen trial days will be required before the Prosecution rests. The Defence case will require a 180 trial days, based on the estimation that the Defence case will take as much time as the Prosecution case.

25. The Military II case of four accused will require 248 trial days, based on the estimation of sixty two trial days per accused. This trial commenced on 20 September 2004 and has been conducted over sixty-six trial days. A further 182 trial days will be required for the completion of this trial.

26. The Karemera *et al.* trial which originally involved four accused, has been conducted over twenty-five trial days but will now start *de novo* (para. 11). One accused (Rwamakuba) has been severed from this case and his trial will require sixty-two trial days. The new trial of the remaining three accused will commence in September 2005. It will require 186 trial days, based on the average of sixty-two trial days per accused.

27. In the Seromba case, the Prosecution has closed its case after twenty-five trial days. A maximum of thirty-five trial days will be required for the presentation of the Defence case and the hearing of closing arguments.

28. The single-accused Muvunyi trial commenced on 28 February 2005 and has thus far proceeded over seventeen trial days. Based on the average of sixty-two trial days for a single- accused trial, this trial will require a further forty-five trial days.

29. The cumulative time required for the completion of trials that are presently in progress is 1,046 trial days. Again, these are only estimates. Some trials may require longer time, others less. Additional time will be required for judgement writing.

Detainees Awaiting Trial

30. The Prosecutor intends to transfer five of the current sixteen detainees to national jurisdictions for trial (paras. 13-15). Trials of the remaining eleven detainees will require 682 trial days, using the average of sixty-two trial days per accused.

V. Workload Relating to Persons at Large

31. According to the Completion Strategy of April 2004, seventeen indictees were at large. Following the arrest and transfer of three of these accused, the number has now been reduced to fourteen. The Prosecutor intends to transfer four of these accused to national jurisdictions for trial. If arrested, the remaining ten indictees will increase the workload of the ICTR. According to the Prosecutor, some of these indictees may be dead, whereas others may never be arrested.

32. The Completion Strategy of September 2003 indicated that twenty-six suspects were at large. As the Prosecutor's strategy is to prosecute before the ICTR those persons bearing the greatest responsibility for the crimes committed in Rwanda in 1994, the number of suspects under investigation was reduced to sixteen in the Completion Strategy submission of April 2004.[7] Following the completion of investigations in respect of the genocide, the files involving eight of these persons have been closed due to lack of evidence. Eight indictments against the remaining eight suspects are being submitted for confirmation. The Prosecutor has also taken account of the mandate of the ICTR, as emphasized by Resolution 1503, to investigate reports of violations by the Rwanda Patriotic Front (RPF).

33. Once an individual is indicted, substantial investigations must be continued in order to support the trial team. Additional investigations may be needed to replace the evidence of witnesses who may have died, to assist in the interviewing of witnesses prior to their travel to Arusha, to supplement and corroborate the evidence, and to address the Defence case and any possible rebuttal.

34. All investigations in respect of the genocide have now been completed, as requested by Resolution 1503 (2003). Moreover, when indictments are submitted for confirmation, the Prosecutor will ensure that the case will be ready for trial, in the sense that all approved identified investigations are completed, a draft pre-trial brief is prepared, together with draft exhibits and witness lists, and that disclosure searches (as of that date) are completed. This will ensure that (i) there will be no delay in trial preparations when the accused is surrendered to the Tribunal; (ii) the case can be more readily assigned to a new Prosecution team if necessary; or (iii) referred to a national jurisdiction pursuant to Rule 11 *bis* of the Rules.

[7] In the November 2004 version of the Completion Strategy the number was fifteen. The correct figure is sixteen.

35. The ICTR may have to hold trials for fourteen persons comprising the ten indictees at large and four of the eight suspects the Prosecutor intends to indict.[8] Based on the average of sixty-two trial days per accused (paras. 17-21), it is estimated that their trials could take 868 trial days. Again, it is stressed that the number of persons brought to trial may be less than fourteen, and that the number of trial days per accused in single-accused trials may be reduced.

36. In addition to investigating the remaining eight suspects whose indictments are being submitted for confirmation, the investigations section continues to provide support in respect of ongoing trials and appeals. There will now be a shift in emphasis from classical investigations to trial and appeals support, with the completion of investigations against the eight suspects.

VI. Transfer of Cases by the Prosecutor to National Jurisdictions

37. The Completion Strategy of September 2003 indicated that about forty cases were earmarked for transfer to national jurisdictions. According to the April 2004 Completion Strategy, the Prosecutor increased the number of these cases from forty to forty-one. He is currently engaged in discussions with some States for this purpose. His intention is to transfer, in some cases, files in respect of which investigations have been completed and are trial ready and, in other cases, dossiers requiring further investigations by the receiving country. The decision to transfer cases to national jurisdictions is a judicial one in cases where indictments exist. In addition to the five detainees (paras. 14-15 and 30), the four indictees still at large (para. 31), and four of the suspects whose indictments are being submitted for confirmation (para. 35), the Prosecutor envisages the transfer of cases involving thirty-two individuals to national jurisdictions for trial. This process has commenced. Case files in respect of fifteen suspects have already been transferred to Rwanda.

38. In preliminary discussions with national authorities, the Office of the Prosecutor has ascertained that the laws of the State in which some suspects are present may not confer jurisdiction over these suspects or the crimes they allegedly committed. Others have investigated the cases and not pursued them, and may be reluctant to re-open these cases. Many of the suspects are in less-developed countries where judicial systems are under strain arising from the prosecution of their own accused. The Prosecutor believes that it is important to explore the possibility of transferring cases to African countries where certain suspects are now living, despite the above constraints.

39. Transfer of cases to Rwanda raises several issues. One involves the death penalty, which has been imposed in genocide cases, though only rarely implemented. There is also the issue of the capacity of the Rwandan judicial system to handle such cases at a time when it faces difficulties in coping with thousands of local cases connected with the genocide. Since many of the cases earmarked for transfer are destined for Rwanda, the issue of resources may therefore affect the proposed transfer of cases to Rwanda.

[8] The Prosecutor envisages transferring the other four suspects whom he intends to indict to national jurisdictions for trial.

40. The Prosecutor will initiate discussions with States regarding transfer of cases and transmissions of files. He will insist on compliance with international standards of fair trial on the files transmitted. In the event that it is not possible to transfer or transmit these cases to national jurisdictions, he will make alternate proposals to the Security Council and highlight the related budgetary implications.

VII. Total Remaining Workload

41. The estimated number of trial days required for the completion of all trial work is 2,596 trial days. This is a cumulative assessment made on the basis that 1,046 trial days will be required for the completion of trials in respect of the twenty-five detainees presently on trial; 682 trial days will be required for the completion of trials in respect of the eleven detainees awaiting trial; and 868 trial days will required for the completion of trials in respect of the maximum of fourteen persons comprising the indictees who remain at large and four of the eight suspects whose indictments are being submitted for confirmation.

42. In 2003, the Trial Chambers sat a total of 498 trial days. In 2002, the three Trial Chambers sat a total of 414 trial days. In 2001, the Chambers sat a total of 340 trial days. Examination of the Chambers' actual sitting times shows that the amount of time that a Chamber was able to devote to trials over this three year period was 135 trial days in 2001, 150 trial days in 2002 and 166 trial days in 2003. In previous Completion Strategy submissions, projections were premised on an average of 150 trial days per year, per Trial Chamber Section. For reasons mentioned above (para. 17), estimates in this document will be based on this average.

43. Factors which contributed to a reduction in the number of trial days included the difficulty to obtain the appearance of witnesses from Rwanda and illness on the part of judges and counsel. The ICTR has taken several steps to ensure that such factors are minimized in the future. In particular, the Rules have been amended to allow for a Trial Chamber to continue the trial in the eventuality of a judge being ill, absent or permanently unavailable (Rule 15 *bis*).[9] The insistence by the Trial Chambers on having two Defence counsel and, in the event of illness or absence of one counsel, requiring the remaining counsel to continue, will reduce the occurrence of interruptions of trials. At present, witnesses from Rwanda are appearing before the ICTR. It is important that this situation continues.

44. Experience shows that it is difficult to ensure that witnesses are always available, even with the use of additional witnesses present in Arusha in case of unavailability. A frequent situation in practice is that Prosecution or Defence counsel requires additional time to prepare witnesses for examination-in-chief. The Chambers also have to allow Prosecution and Defence additional time for the preparation of cross-examination in situations where unexpected evidence emerges or evidence is tendered without proper notice. Sufficient time is needed for pre-trial hearings, deliberation on motions and judgement writing. These circumstances combined with illness and other forms of unavailability of witnesses, not only reduce the number of trial days but also the number of sitting hours per trial day.

[9] In 2003, there was a disruption to trial proceedings because some of the judges were not re-elected.

Nevertheless, the Chambers will continue their efforts to increase the time spent in the court room.

VIII. Past and Present Strategies

45. **Pre-trial Stage**: At the commencement of the second mandate, in June 1999, there were a considerable number of pending pre-trial motions. The Prosecutor at that time requested the joinder of a large number of accused in one case, at one point asking for the confirmation of a joint indictment for over twenty suspects. The Confirming Judge denied the request. The Prosecutor then asked for joinder of smaller numbers of accused, who allegedly participated in the same criminal transaction, such as the use of public media, the actions of military officials, government officials, or alleged crimes in certain geographical areas of Rwanda (Butare, Cyangugu). This led to a considerable number of motions from the Prosecution requesting amendments of indictments and the joinder of accused. In addition, a large number of motions were filed by the Defence.

46. Consequently, the first priority for the Chambers in 1999 was to reduce the number of motions in order to move cases to the trial stage. To facilitate this, the judges amended the Rules in order to allow for motions to be considered solely on written pleadings and also by a single judge. These measures taken to reduce the workload of outstanding motions increased the efficiency of the Chambers and reduced costs in connection with oral hearings of motions. After having reduced the number of pending motions to a minimum, full translation and disclosure of documents was ordered before all three Trial Chambers could commence with trial.

47. Additionally, changes to the Rules were adopted by the judges in the Plenary to regulate the pre-trial process and to restrict the number of interlocutory appeals that were delaying the commencement of trials. Through pre-trial and pre-defence status conferences, a Trial Chamber has the authority to streamline trial proceedings. In particular, the parties may be ordered to file briefs addressing the factual and legal issues, identifying contested matters, and provide a list of witnesses intended to be called, along with a summary of the facts and the specific allegations in the indictment on which the witnesses will testify. Moreover, the parties must give an estimate of the time that will be taken by each witness to give their evidence, and the Trial Chamber may order a reduction in the number of witnesses and the time for witnesses to give evidence-in-chief. The Trial Chamber may also order information on the status of exhibits (Rules 73 *bis* and *ter*).

48. A useful step was the establishment of the Trial Committee in 2003, which is composed of representatives of Chambers, the Registry and the Prosecution. The Committee, which is in contact with the various Defence teams, has facilitated the trial-readiness of several new cases. A Translation Working Group has studied ways to speed up translation of documents and thus avoid delays in the judicial proceedings.

49. Guilty pleas reduce the length of trials. Experience shows that not more than a day is needed for a Chamber to satisfy itself that a guilty plea is informed, unequivocal, and made freely and voluntarily. The writing of the judgement requires a few weeks. Unlike the

situation at the ICTY, very few accused have pleaded guilty at the ICTR.[10] It is difficult at this stage to estimate how many accused at the ICTR may in future plead guilty. At the Plenary Session in May 2003, the Rules were amended, providing a legal basis for plea-agreements.

50. **The Trial Stage:** All Trial Chambers have been conducting trials on a twin-track basis (in some instances also on a "triple-track" basis). This strategy resulted in the production of a considerable number of judgements in 2003. However, twin-tracking of two big cases or more is cumbersome. Experience shows that the best model is to twin-track one big and one small case, and this strategy will be followed in the future, unless the big case is particularly voluminous and complex. When required, the ICTR is using the so-called "shift system", which ensures that one court room is used for two cases heard in morning and afternoon sessions. The shift system operates in a morning shift from 8.45 to about 13.00, and an afternoon shift until about 18.30.

51. Following the ICTR's request of 9 July 2001, the Security Council adopted Resolution 1431 of 8 August 2002, created a pool of eighteen *ad litem* judges. The purpose of this reform, which followed a similar Security Council resolution for the ICTY in 2000, was to increase the judicial capacity of the ICTR. The election of the eighteen *ad litem* judges by the General Assembly took place on 25 June 2003. The first *ad litem* judge took office on 1 September 2003 and three other *ad litem* judges arrived in October 2003. Pursuant to two other requests on 8 September 2003 and 29 September 2003, respectively, the Security Council on 27 October 2003 adopted Resolution 1512, which increased, from four to nine, the number of *ad litem* judges who could take office at any one time. The Security Council also conferred on the *ad litem* judges the competence to adjudicate over pre-trial matters. The fifth judge arrived in March 2004. The arrival of the five *ad litem* judges made it possible to start four new trials and to continue the Butare trial. After the arrival of the remaining four *ad litem* judges in September 2004, it was possible to commence another two trials.[11]

52. With nine *ad litem* judges, the Tribunal is able to set up six Trial Chamber Sections. These six Sections will be able to produce 4,500 hours of trial work over 900 trial days per year. However, it follows from the ICTR Statute that a Trial Chamber Section must be comprised of both permanent and *ad litem* judges. Hence, the full utilisation of *ad litem* judges depends on the availability of permanent judges. At present, several permanent judges are engaged in voluminous trials.[12] This makes it difficult to maintain six Trial Chamber Sections on a permanent basis. However, experience shows the usefulness of twin-tracking one joint trial with a single-accused trial, as well as the Trial Chamber Sections sitting in

[10] The following judgements were based on guilty-pleas: *Prosecutor v. Jean Kambanda* (1998); *Prosecutor v. Omar Serushago* (1999); *Prosecutor v. Georges Ruggiu* (2000); *Prosecutor v. Vincent Rutaganira* (2005).

[11] From September 2003 to the end of April 2004, *ad litem* judges participated in the following four new trials: Ndindabahizi, Government, Karemera *et al.*, and Muhimana. From September 2004, *ad litem* judges also sat in the Seromba and Military II trials.

[12] Two permanent judges sit in the Butare trial and three in the Military I trial.

shifts. Therefore, the number of Trial Chamber Sections is about six, even if they are not all sitting on a permanent basis.[13]

53. As mentioned above, nine trials are currently in progress of which five are voluminous joint trials. It is important to find the right balance between the multi-accused and single-accused trials. Some Trial Chamber Sections sit in morning and afternoon shifts. These sessions are shorter than full trial days, by about two hours. In the November 2004 version of the Completion Strategy, it was mentioned that the construction of a fourth courtroom would allow for more full trial days, thus increasing the progress of the multi-accused trials and courtroom capacity when appeals are heard. Following voluntary contributions by the Norwegian and United Kingdom Governments, a new courtroom was constructed in record time and inaugurated on 1 March 2005. This is a very important element of the Tribunal's Completion Strategy.

54. In spite of all measures taken to accelerate the proceedings, cases still appear to be time-consuming. It should be remembered that conducting judicial proceedings at the international level is a more complicated task than at the national level. The cases at the *ad hoc* Tribunals are legally and factually very complex. There is a considerable volume of documents normally disclosed during trials of alleged architects of the atrocities, including alleged high-ranking members of the government. These documents must be translated for legal teams and accused, who may require translations of all the documents into the other official language of the Tribunal before they respond to motions or undertake trial preparation. The number of witnesses is often considerable, and simultaneous interpretation of all testimony is required into three languages. Witnesses have often to be extracted from difficult environments, afforded considerable protection before and after testimony and sometimes re-located. The staff and counsel involved in cases come from different cultures and traditions, and effective communication requires new skills and extra effort. Prosecution and Defence counsel come from all over the world, and have different court-room styles. Defence counsel have to leave their other case-work for considerable periods to spend time working at the ICTR in Arusha, usually away from their practices.

55. **Administrative Matters:** With the shift in emphasis of the ICTR from one centred on investigation and arrests to one centred on trials, the Registry will focus its attention on the end-date for the Tribunal in all aspects of its work. Contracts entered into, item of equipment purchased and personnel recruited will all bear a close relationship to the Completion Strategy.

56. In assessing its needs for human resources with a view to promoting the implementation of its Completion Strategy, the Prosecutor envisages a substantial increase in the number of trial attorneys and an expansion of its Appeals Section. Investigative and administrative support is also needed. This increase will be addressed by redeployment. The Prosecutor expects that at the anticipated conclusion of investigations, some posts presently held by investigators could be re-deployed to increase the number of trial attorneys, legal advisors and other staff required for trial.

[13] There were eight Trial Chamber Sections in the first four months of 2005: Butare, Military I, the Government case, Military II, Muhimana, Simba, Seromba and Muvunyi. This is possible because some judges sit in two trials, either because of twin-tracking or the shift-system.

57. **Sufficient Resources:** In order to respect the time-frames laid down by Security Council resolutions 1503 and 1534, the ICTR must continue to receive the necessary resources. Last year, the United Nations administration imposed a freeze on the recruitment of new staff at the Tribunal, due to delays in the payment of contributions to the *ad hoc* Tribunals by Member States. This threatened to have significant effect on the Completion Strategy. The lifting of the freeze at the beginning of 2005 improved the situation.

IX. Conclusions

58. The estimated work-load outlined above makes it possible to draw the following conclusions based on six Trial Chamber Sections.

59. As mentioned above, there are currently twenty-five detainees in nine trials (Butare, Military I, the Government Case, Military II, Karemera *et al.*, Simba, Seromba, Muvunyi and Rwamakuba), five of which are lengthy because they are joint trials. These trials are at different stages. An estimate of 1,046 trial days will be required for their completion. Trials of the eleven detainees awaiting trial will require about 682 trial days. Approximately 868 trial days will be required for the completion of trials in respect of the fourteen persons comprising the indictees who remain at large and suspects who are likely to be indicted and tried before the Tribunal.

60. In the Completion Strategy of April 2004, it was projected that in 2004, three trials (Gacumbitsi, Ndindabahizi and Muhimana) would be completed. This target was met. It was also stated that three trials involving six accused (Simba, Seromba and Military II) would commence from May to September 2004. This projection was also accomplished.

61. In 2005, judgements have thus far been delivered in the Rutaganira and Muhimana cases. Judgements in the Simba and Seromba trials are expected later this year. The Completion Strategy of November 2004 indicated that three single-accused trials will commence in 2005. One of these trials (Muvunyi) is in progress. The other two will commence later this year.

62. In 2006, trials in the Butare, Military I and Government cases are expected to be completed.[14] With the completion of most multi-accused trials, more permanent judges will become available to sit with *ad litem* judges. It is therefore expected that about six new single-accused trials could commence in 2006.

63. In 2006/7, Karemera *et al.* and the Military II cases are expected to have been completed. About six single-accused trials could commence, including indictees at large or suspects. Depending on the progress of these cases, about six single-accused trials could start in 2008.

[14] In the Completion Strategy of November 2004, it was projected that the Military I trial would be completed by 2005. However, counsel for one of the accused was withdrawn from the case, which resulted in a delay in the resumption of trial.

64. The above projections suggest that, by 2008, the ICTR could complete trials and judgements in the range of sixty-five to seventy persons, depending on the progress of present and future trials. Again, it is emphasized that this is an estimate. It also depends on sufficient resources being made available. The Tribunal is committed to bringing to justice those persons who were most responsible for genocide and violations of international humanitarian law that were committed in Rwanda in 1994. In this process, the ICTR will establish the guilt or innocence of the accused, bring justice to victims of the massive crimes that were committed and establish a record of facts that can aid reconciliation in Rwanda. The Tribunal will also leave a legacy of international jurisprudence that can guide future courts and deter the future commission of these grave crimes.

65. As mentioned above (para. 1), the present document is part of the ICTR's continuing process of refining its Completion Strategy. The Tribunal welcomes contributions to this process.

ANNEX 1

PERSONS CONVICTED OR ACQUITTED: TWENTY-FIVE ACCUSED IN NINETEEN JUDGEMENTS

First Mandate (May 1995-May 1999)

Name	Former Title	Initial Appearance	TC	Judgement
J.-P. Akayesu	Bourgmestre of Taba	30 May 1996	TC1	2 September 1998
J. Kambanda	Prime Minister	1 May 1998	TC1	4 September 1998 (guilty plea)
O. Serushago	Businessman, Interahamwe leader	14 December 1998	TC1	5 February 1999 (guilty plea)
C. Kayishema	Prefect of Kibuye	31 May 1996	TC2	21 May 1999 (joinder)
O. Ruzindana	Businessman	29 October 1996		
G. Rutaganda	Businessman, 2nd Vice-president of Interahamwe	30 May 1996	TC1	6 December 1999
A. Musema	Businessman	18 November 1997	TC1	27 January 2000
Sum first mandate				**Six judgements (seven accused)**

Second Mandate (May 1999-May 2003)

G. Ruggiu	RTLM Journalist	24 October 1997	TC1	1 June 2000 (guilty plea)
I. Bagilishema	Bourgmestre of Mabanza	1 April 1999	TC1	7 June 2001
G. Ntakirutimana	Doctor	2 December 1996	TC1	21 February 2003 (joinder)
E. Ntakirutimana	Pastor	31 March 2000		
L. Semanza	Bourgmestre of Bicumbi	16 February 1998	TC3	15 May 2003
E. Niyitegeka	Minister of Information	15 April 1999	TC1	15 May 2003
J. Kajelijeli	Bourgmestre of Rukingo	19 April 1999	TC2	1 December 2003
F. Nahimana	RTLM Director	19 February 1997	TC1	"Media case" (joinder) 3 December 2003
H. Ngeze	Kangura Editor	19 November 1997		
J.-B. Barayagwiza	Director, Ministry of Foreign Affairs	23 February 1998		
J. Kamuhanda	Minister of Culture and Education	24 March 2000	TC2	22 January 2004
A. Ntagerura	Minister of Transport	20 February 1997	TC3	"Cyangugu case" (joinder) 25 February 2004
E. Bagambiki	Prefect of Cyangugu	19 April 1999		
S. Imanishimwe	Lieutenant in FAR	27 November 1997		
Sum second mandate				**Nine judgements (14 accused)**

Trials started and completed within the third mandate (May 2003-May 2007)

Name	Former Title	Initial Appearance	TC	Judgement
S. Gacumbitsi	Bourgmestre of Rurumo	20 June 2001	TC3	17 June 2004. Trial started on 28 July 2003.
E. Ndindabahizi	Minister of Finance	19 October 2001	TC1	15 July 2004. Trial started on 1 September 2003.
V. Rutaganira	Councillor	26 March 2002	TC 3	Guilty Plea. Judgement of 14 March 2005.
M. Muhimana	Councillor	29 November 1999	TC 3	28 April 2005. Trial started on 29 March 2004.
Sum third mandate so far				**Four judgements (four accused)**

Positions: The 25 accused held the following positions in 1994: 1 Prime Minister, 4 Ministers, 2 Prefects, 5 Bourgmestres, 2 Councillors, 1 Senior Admin., 3 Media, 1 Military, 1 Clergy, 5 Other.

ANNEX 2

TRIALS IN PROGRESS: TWENTY-FIVE DETAINEES IN NINE CASES

Name	Former Title	Initial Appearance	TC	Comments
P. Nyiramasuhuko	Minister of Family and Women's Affairs	3 September 1997	TC2	"Butare case" (joinder). Started in second mandate. Completion in 2006.
A. S. Ntahobali	Interahamwe leader	17 October 1997		
S. Nsabimana	Prefect of Butare	24 October 1997		
A. Nteziryayo	Prefect of Butare	17 August 1998		
J. Kanyabashi	Bourgmestre of Ngoma	29 November 1996		
E. Ndayambaje	Bourgmestre of Muganza	29 November 1996		
T. Bagosora	Dir. Of Cabinet, Ministry of Defence	20 February 1997	TC1	"Military I case" (joinder). Started in second mandate. Completion in 2006.
G. Kabiligi	Brigadier-General in FAR	17 February 1998		
A. Ntabakuze	FAR Battalion Commander	24 October 1997		
A. Nsengiyumva	Lieutenant-Colonel in FAR	19 February 1997		
C. Bizimungu	Minister of Health	3 September1999	TC2	"Government case" (joinder). Started on 5 November 2003. Completion in 2006.
J. Mugenzi	Minister of Commerce	17 August 1999		
J. Bicamumpaka	Minister of Foreign Affairs	17 August 1999		
P. Mugiraneza	Minister of Civil Service	17 August 1999		
E. Karemera	Minister of Interior, V-P of MRND	7 April 1999	TC3	"Karemera *et al.* case" (joinder). Started on 27 November 2003; commences *de novo* 5 September 2005. Completion in 2006/7.
M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 April 1999		
J. Nzirorera	President of National Assembly, S-G of MRND	7 April 1999		
A. Rwamakuba	Minister of Education	7 April 1999	TC3	Started on 27 November 2003; commences *de novo* 9 June 2005.
A. Simba	Lieutenant-Colonel in FAR	18 March 2002	TC1	Started on 30 August 2004. Judgement in 2005.
A. Seromba	Priest, Kivumu Commune	8 February 2002	TC3	Started on 20 September 2004. Judgement in 2005.
A. Ndindilyimana	Chief of Staff of Gendarmerie	27 April 2000	TC2	"Military II case" (joinder). Started on 20 September 2004. Completion in 2006/7.
F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000		
I. Sagahutu	2IC of Reconn. Battalion	28 November 2000		
A. Bizimungu	Chief of Staff of FAR	21 August 2002		
T. Muvunyi	Military Commander	8 November 2000	TC2	Trial started on 28 February 2005.

Positions: 7 Ministers, 1 Parliamentarian, 2 Prefects, 1 Senior admin., 2 Bourgmestres, 10 Military, 1 Clergy, 1 Other.

ANNEX 3

AWAITING TRIAL: SIXTEEN DETAINEES

Name	Former Title	Initial Appearance	TC	Number of OTP witnesses.*
S. Nchamihigo	Deputy Prosecutor	29 June 2001	TC1	15
J. Mpambara	Bourgmestre of Rukara	8 August 2001	TC1	20
E. Rukundo	Chaplain	26 September 2001	TC3	20
P. Zigiranyirazo	Businessman	10 October 2001	TC3	30
F. Karera	Prefect of Kigali Rural	26 October 2001	TC3	15
P. Bisengimana	Bourgmestre of Gikoro	18 March 2002	TC2	15
J. Nzabirinda	Youth Organizer	27 March 2002	TC2	15
S. Bikindi	Musician	4 April 2002	TC3	30
H. Nsengimana	Rector, Christ-Roi College	16 April 2002	TC2	15
J.-B. Gatete	Bourgmestre of Murambi	20 September 2002	TC1	30
T. Renzaho	Prefect of Kigali	21 November 2002	TC2	30
I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 February 2003	TC3	
J. Rugambarara	Bourgmestre of Bicumbi	15 August 2003	TC2	
Y. Munyakazi	Interahamwe leader	12 May 2004	TC1	
G. Kanyarukiga	Businessman	22 July 2004	TC1	
E. Setako	Colonel	22 November 2004	TC 1	

Positions: 2 Prefects, 4 Bourgmestres, 1 Lesser admin, 2 Military, 2 Clergy, 5 Others.
* The number of OTP witnesses heard during trial is normally lower than pre-trial estimates.

ANNEX 4

ESTIMATES BASED ON THE PROSECUTOR'S (OTP) FIGURES FOR PRESENT DETAINEES (PREVIOUS COMPLETION STRATEGY)

	Case	No. of Accused	No. of OTP witnesses	No. of hours for OTP case-in-chief	No. of hours for Defence cross-examination	No. of hours for Defence case-in-chief	No. of hours for OTP cross-examination	Total hours
1	Butare	6	68	330	330	330	330	1320
2	Military I	4	100	500	500	500	500	2000
3	Muvunyi and Hategikimana	2	43	180	180	180	180	720
4	Seromba	1	20	100	100	100	100	400
5	Ndindabhizi	1	15	50	50	50	50	200
6	Military II	4	90	500	500	500	500	2000
7	Government I	4	50	300	300	300	300	1200
8	Karemera *et al.*	4	45	300	300	300	300	1200
9	Zigiranyirazo	1	30	100	100	100	100	400
10	Bikindi	1	30	100	100	100	100	400
11	Renzaho	1	30	100	100	100	100	400
12	Gikongoro	1	41	170	170	170	170	680
13	Bisengimana	1	15	50	50	50	50	200
14	Karera	1	15	50	50	50	50	200
15	Mpambara	1	30	150	150	150	150	600
16	Gacumbitsi	1	30	120	120	120	120	480
17	Rukundo	1	20	80	80	80	80	320
18	Nzabirinda	1	15	60	60	60	60	240
19	Nsengimana	1	15	60	60	60	60	240
20	Muhimana	1	15	60	60	60	60	240
21	Rutaganira	1	15	60	60	60	60	240
22	Gatete	1	30	120	120	120	120	480
23	Nchamihigo	1	15	60	60	60	60	240
24	Rugambarara	1	20	80	80	80	800	340
		42	**794**	**3680**	**3680**	**3680**	**3680**	**14740**